

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

CHRISTOPHER BROOKS,

Plaintiff,

Case No. 1:14-cv-631

v

HON. JANET T. NEFF

T. JONES, *et al.*,

Defendants.

_____ /

OPINION AND ORDER

Plaintiff initiated this prisoner civil rights action on June 11, 2014, against sixteen defendants (Dkt 1). He filed an Amended Complaint on September 29, 2014 (Dkt 8). In June 2015, the claims remaining in this matter were against Defendants Gladsklov and Jones and three unidentified Defendants. Defendants Gladsklov and Jones filed motions for summary judgment based on Plaintiff's failure to exhaust his administrative remedies (Dkts 23 & 28). The matter was referred to the Magistrate Judge, who issued a Report and Recommendation (R&R, Dkt 33), recommending that the Court grant both motions and dismiss without prejudice the claims against the unknown parties for failure to timely effect service (*id.* at 7). The matter is presently before the Court on Plaintiff's objections to the Report and Recommendation (Dkt 36). In accordance with 28 U.S.C. § 636(b)(1) and FED. R. CIV. P. 72(b)(3), the Court has performed de novo consideration of those portions of the Report and Recommendation to which objections have been made. For the following reasons, the Court denies the objections and issues this Opinion and Order.

Plaintiff does not challenge the Magistrate Judge's determination that his claims against the three unknown defendants are properly dismissed for failure to effect service. Plaintiff objects only to the Magistrate Judge's determination that Plaintiff's claims against Defendants Gladsklov and Jones must be dismissed for Plaintiff's failure to exhaust these claims. In this regard, the Magistrate Judge determined that Defendants Gladsklov and Jones submitted evidence indicating that Plaintiff had pursued only one grievance through all three steps of the grievance process, and that that grievance was ultimately rejected as untimely filed and therefore could not serve to exhaust any of Plaintiff's remaining claims (R&R, Dkt 33 at 5). The Magistrate Judge indicated that Plaintiff, in contrast, had submitted no evidence, merely asserting that he did "not concur nor agree" with Defendants' exhaustion argument (R&R, Dkt 33 at 6).

In his objections, Plaintiff reiterates his unsubstantiated claim that he "follow[ed] all steps to the appeal process" and does not identify any factual or legal error in the Magistrate Judge's analysis (Objs., Dkt 36 at 1). The Court determines that the Magistrate Judge properly concluded from the motion papers before her that Defendants Gladsklov and Jones satisfied their burden of demonstrating that Plaintiff had not properly exhausted his claims against them. Plaintiff's objections are therefore denied.

Accordingly, this Court adopts the Magistrate Judge's Report and Recommendation as the Opinion of this Court. Because this Opinion and Order resolves the last pending claim in this case, the Court will deny Plaintiff's pending motion for appointment of counsel (Dkt 32), a request he reiterated in his Objections (Dkt 36 at 2-3). *See generally Lavado v. Keohane*, 992 F.2d 601, 606 (6th Cir. 1993).

This Court will also enter a Judgment. *See* FED. R. CIV. P. 58. Plaintiff is proceeding *in forma pauperis*, and this Court certifies, pursuant to 28 U.S.C. § 1915(a)(3), that an appeal of the Judgment would not be taken in good faith. *See McGore v. Wigglesworth*, 114 F.3d 601, 610 (6th Cir. 1997), overruled on other grounds by *Jones v. Bock*, 549 U.S. 199, 206, 211-12 (2007).

Therefore:

IT IS HEREBY ORDERED that the Objections (Dkt 36) are DENIED, and the Report and Recommendation (Dkt 33) is APPROVED and ADOPTED as the Opinion of the Court.

IT IS FURTHER ORDERED that Defendant Jones' Motion for Summary Judgment (Dkt 23) is GRANTED, and Plaintiff's claims against Defendant Jones are DISMISSED for failure to properly exhaust administrative remedies.

IT IS FURTHER ORDERED that Defendant Gladsklov's Motion for Summary Judgment (Dkt 28) is GRANTED, and Plaintiff's claims against Defendant Gladsklov are DISMISSED for failure to properly exhaust administrative remedies.

IT IS FURTHER ORDERED that Plaintiff's claims against Unknown Party #1, Unknown Party #2, and Unknown Party #3 are DISMISSED without prejudice for failure to timely effect service.

IT IS FURTHER ORDERED that Plaintiff's Second Motion to Appoint Counsel (Dkt 32) is DENIED.

Dated: February 5, 2016

/s/ Janet T. Neff

JANET T. NEFF

United States District Judge